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In re Application of Kenji Fukudome et al. :  
Serial No.: 09/378,261 : WITHDRAWAL OF ABANDONMENT  
Filed: August 20, 1999 :  
Attorney Docket No.: OMRF.152-DIV :

This is in response to applicants' petition under 37 CFR 1.181, filed April 28, 2003, to withdraw the abandonment of the above identified application.

## BACKGROUND

A review of the file history shows that applicants filed an appeal brief on November 26, 2002. The examiner mailed a Notification of Non-Compliance with 37 CFR 1.192(c) to applicants on February 11, 2003, setting a one month period for reply (extendible under 37 CFR 1.136). Several defects in the appeal brief were pointed out in the Notification, including a lack of arguments to support applicants' statement that the claims do not stand or fall together. Applicants filed a substitute appeal brief on March 17, 2003. On April 17, 2003 the examiner mailed a Notice of Abandonment. The Notice stated that the substitute appeal brief still lacked arguments to support applicants' statement that the claims do not stand or fall together, and therefore did not constitute a *bona fide* attempt at a proper reply.

## DISCUSSION

At the outset, it is noted that the Notice of Abandonment was improper because applicants' time period for response to the Notification of Non-Compliance could have been extended under 37 CFR 1.136. Even if applicants' response were insufficient, an extension of time was still obtainable.

Applicants argue that the substitute appeal brief does contain arguments to support applicants' statement that the claims do not stand or fall together. Review of the substitute appeal brief reveals that the patentability of the various claims is argued separately in section 8 ("arguments"). This meets the requirements of 37 CFR 1.192(c).

DECISION

Applicant's petition is **GRANTED**. The application is restored to pending status with the mailing of this decision and will be forwarded to the examiner for consideration of the substitute appeal brief.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-4205 or by facsimile transmission at (703) 746-5006.

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